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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,539	02/06/2004	Jason Tatge	Z2285-5-9	6495

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 PATENT DOCKET ADMINISTRATOR
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EXAMINER

DUNHAM, JASON B

ART UNIT	PAPER NUMBER
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3625

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/773,539

Applicant(s)

TATGE ET AL.

Examiner

Jason B. Dunham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-17 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-17, and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant amended claims 1, 16, and 24, and canceled claims 4-6 and 18-19 in the response filed February 14, 2007 to the office action dated August 14, 2006. Claims 1-3, 7-17, and 20-24 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 7-17, and 20-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Dines (U.S. Patent Application Publication No. 2002/0052795).

Referring to claim 1. Dines discloses a computer implemented method for offering an average pricing contract for a commodity, comprising the steps of:

- Specifying a commodity (Dines: abstract);
- Specifying a quantity of the commodity (Dines: abstract);
- Specifying a pricing period (Dines: paragraph 17);
- Specifying days of the week during the pricing period (Dines: paragraph 18);

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- Specifying pricing points for each of the specified days of the week for pricing the commodity (Dines: paragraphs 18 and 20); and
- Offering to sell the quantity of the commodity at a price to be determined based on current cash market prices for the commodity at the pricing points (Dines: paragraphs 17 and 20);
- Wherein the pricing points are each specified at one of a specific time, an opening trade, and a closing trade (Dines: paragraph 18).

Referring to claim 2. Dines further discloses a method wherein the price is an average of the current cash market prices (Dines: paragraph 17).

Referring to claim 3. Dines further discloses a method wherein each of the current cash market prices for the commodity is determined by obtaining a futures prices for the commodity (Dines: paragraph 18); and adjusting the obtained futures price by a specified basis value (Dines: paragraph 18).

Referring to claim 7. Dines further discloses a method including the step of specifying a delivery period (Dines: figure 1 & paragraphs 37 and 59).

Referring to claim 8. Dines further discloses a method including the step of specifying a delivery location (Dines: paragraph 19).

Referring to claim 9. Dines further discloses a method wherein the offering step includes posting the offer via the Internet (Dines: paragraph 48).

Referring to claim 10. Dines further discloses a method including the step of forming a contract by accepting the offer (Dines: paragraphs 6 and 11).

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Referring to claim 11. Dines further discloses a method including the step of displaying the progress of delivery of the commodity (Dines: paragraph 51).

Referring to claim 12. Dines further discloses a method including the step of displaying the progress of pricing of the commodity (Dines: abstract).

Referring to claim 13. Dines further discloses a method including the step of displaying final pricing information (Dines: paragraph 59).

Referring to claim 14. Dines further discloses a method including executing the contract at the final price (Dines: figure 1 & paragraphs 57 and 59).

Referring to claim 15. Dines further discloses a method including the step of automatically providing a hedging transaction for the buyer of the commodity (Dines: abstract & paragraphs 31 and 42).

Referring to claims 16-17 and 20-21. Claims 16-17 and 20-21 are rejected under the same rationale set forth above in the rejection of claims 1,3-4, and 6-8.

Referring to claim 22. Dines further discloses a system wherein the site is a Web site (Dines: paragraph 51).

Referring to claims 23-24. Claims 23-24 are rejected under the same rationale set forth above in the rejection of claims 15 and 1, respectively.

Response to Arguments

Applicant's arguments filed February 14, 2007 have been fully considered but they are not persuasive. Applicant argues that Dines does not disclose specifying pricing periods as recited in amended claim 1 of the application. The examiner notes

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that the newly amended limitations of independent claims 1, 16, and 24 substantially appear in the original claims as dependent claims that were previously rejected in the office action dated August 14, 2006. As previously noted, paragraphs 17-18 of Dines disclose in part:

- “The premium or discount may be set above, equal to, or below the modified average price during a given time frame depending on the specifics of a distinct contract or combination of distinct contracts.”
- “As a simple example, if there are five observation points during a given period of time, the price for the agricultural product is determined at each observation point. If the agricultural product is corn, for example, the observation points may be the December futures prices for corn at the **close of trading for five specified days (emphasis added)**. The contract price for the agricultural product is then the average of the five observation point prices.”

The examiner submits that the “observation points” of Dines are the same as the “pricing points” of the current application and that Dines does disclose all the limitations of the independent claims. Clearly, Dines discloses specifying a pricing period, specific days, and pricing points at specific times. The dependent claims are rejected under the same rationale.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason B. Dunham whose telephone number is 571-272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JBD
Patent Examiner
4/2/07


YOGESH C. GARG
PRIMARY EXAMINER
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